

Della J. Durham
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

IN RE:	§	CASE NO. 15-10238-rlj-13
	§	
JIMMY LEE GIESLER	§	
BRENDA KAY GIESLER	§	
	§	
DEBTORS	§	

DEBTORS' MOTION TO DETERMINE MORTGAGE PAYMENT CHANGE FILED BY US BANK
TRUSTEE NATIONAL ASSOCIATION, AS TRUSTEE OF THE SCIG SERIES III TRUST

TO THE HONORABLE JUDGE OF SAID COURT:

Debtors in the above-entitled cause file this *Debtor's Motion To Determine Mortgage Payment Change Filed By US Bank Trustee National Association, as Trustee of the SCIG Series III Trust* and would respectfully show the Court as follows:

1. On November 7, 2019, *US Bank Trustee National Association, as Trustee of the SCIG Series III Trust* (hereafter US Bank) filed a whereby Debtors' monthly mortgage payment changes from \$434.88 to \$1,128.68 beginning December 1, 2019.
2. Debtors object to this notice of mortgage payment change because Debtors believe this monthly mortgage payment is not necessary for the following reasons.
3. When Debtors filed their Chapter 13 case on November 23, 2015, their mortgage was held by DLJ Mortgage Capital, Inc. and serviced by Home Servicing, LLC. On February 22, 2018, a *Transfer of Claim Other Than For Security* was filed with the Court transferring the mortgage to *US Bank Trustee National Association, as Trustee of the SCIG Series III Trust* with servicing by *BSI Financial Services*.
4. On March 21, 2016, DLJ Mortgage Capital, Inc. filed a proof of claim, Claim #4. The Mortgage Proof of Claim Attachment showed the monthly payment to include principal and interest only in the amount of \$434.88, pre-petition arrears of principal and interest due in the amount of \$14,785.92, pre-petition fees due in the amount of \$1,174.05, and a pre-petition escrow deficiency for funds advanced in the amount of \$3,371.02.

5. The *Notice of Mortgage Payment Change* filed by US Bank includes an Annual Escrow Account Disclosure Statement that indicates monthly escrow payments in the amount of \$693.80 to begin December 1, 2019. This amount includes \$129.50 monthly for future County Tax payments and \$564.30 monthly for an escrow shortage in the amount of \$6,771.69. The statement does not detail the source of the purported escrow deficiency.
6. US Bank has not filed any notices of fees, expenses and charges with the Court..
7. Debtors cannot verify the validity of the purported escrow shortage and whether the stated amount includes pre-petition escrow deficiency that is already included in their plan.
8. For these reasons, Debtors request the Court to determine that the *Notice of Mortgage Payment Change* filed by U.S. Bank is not required to maintain payments in accordance with Section 1322(b)(5) of the U.S. Bankruptcy Code.

WHEREFORE, Debtor prays the Court enter an Order that the *Notice of Mortgage Payment Change* filed by U.S. Bank is not required to maintain payments in accordance with Section 1322(b)(5) of the U.S. Bankruptcy Code and for additional or alternative relief as may be just and proper.

Respectfully submitted,

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By: /s/ Della J. Durham
SBN: 24002025
Attorney for Debtor

NOTICE OF HEARING

A hearing will be held in regards to *Debtor's Motion To Determine Mortgage Payment Change Filed By US Bank Trustee National Association, as Trustee of the SCIG Series III Trust* on January 8, 2020 at 11:00 A.M., at the U.S. Courthouse, 341 Pine, Room 2201, Abilene, Texas 79601. A pre-hearing conference will be held at 9:00 A.M. on the same date at the same location.

/s/Della J. Durham
Della J. Durham
Attorney for Debtors

CERTIFICATE OF SERVICE

The undersigned hereby certified on November 25, 2019, a true and correct copy of the foregoing was served on the following parties in interest by ECF and/or regular mail:

Robert B. Wilson
1407 Buddy Holly Avenue
Lubbock, TX 79401

U.S. Trustee
1100 Commerce, Rm. 9C60
Dallas, Texas 75242

Jimmy Lee Giesler
Brenda Kay Giesler
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1920 Old Tustin Ave
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Attorney for US Bank Trustee National
Association, as Trustee of the SCIG Series III Trust

By: /s/ Della J. Durham
Della J. Durham
Attorney for Debtors